

APPEAL NO. 041311
FILED JULY 12, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 5, 2004. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on September 12, 2002, with a 0% impairment rating (IR) as assessed by the designated doctor whose report was not contrary to the great weight of other medical evidence.

The claimant appealed, contending that the designated doctor did not do proper range of motion (ROM) testing, that the hearing officer failed to give adequate weight to certain reports, and essentially claiming bias by the hearing officer based on another case involving the hearing officer and the treating doctor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the carrier accepted a compensable bilateral carpal tunnel syndrome (CTS) injury. The claimant has not had surgery. The designated doctor, in a report dated September 12, 2002, certified MMI on that date with a 0% IR. The designated doctor noted full ROM, listed results of his neurological exam, and diagnosed possible mild early CTS and a wrist sprain, utilizing the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000). The Texas Workers' Compensation Commission (Commission) requested clarification from the designated doctor (based on a report from the treating doctor) regarding "EMG testing" and requested comment on the treating doctor's report. The designated doctor responded that he had reviewed the EMG, performed ROM testing, and did not change his opinion. The claimant, at the CCH, contends that the designated doctor did not do ROM testing using a goniometer and inclinometer. The treating doctor, in a report dated March 30, 2004, certified MMI on October 12, 2002, with a 16% IR based on 17% impairment of the right arm and 11% impairment of the left arm combined to form the 16% whole person IR.

For a claim for workers' compensation benefits based on a compensable injury that occurred before June 17, 2001, Sections 408.122(c) and 408.125(e) provide that the report of the designated doctor shall have presumptive weight, and the Commission shall base its determination of MMI and IR on the designated doctor's report unless the great weight of the other medical evidence is to the contrary. The treating doctor's conclusions and his agreement involve a matter of medical judgment. The hearing officer found that the presumptive weight afforded to the opinion of the designated doctor was not overcome by the great weight of other medical evidence. The hearing

officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant for the first time on appeal offers information regarding the hearing officer and the treating doctor in another unrelated case. We do not normally consider matters raised for the first time on appeal particularly regarding an unrelated case. We find no evidence of bias in our review of the record.

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEE F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge